

Introduced by Senator Hall

February 27, 2015

An act to amend Section 1276.65 of the Health and Safety Code, and to amend Section 14126.022 of the Welfare and Institutions Code, relating to health care facilities.

LEGISLATIVE COUNSEL'S DIGEST

SB 779, as introduced, Hall. Skilled nursing facilities: certified nurse assistant staffing.

(1) Existing law provides for the licensure and regulation by the State Department of Public Health of health facilities, including skilled nursing facilities. Existing law requires the department to develop regulations that become effective August 1, 2003, that establish staff-to-patient ratios for direct caregivers working in a skilled nursing facility. Existing law requires that these ratios include separate licensed nurse staff-to-patient ratios in addition to the ratios established for other direct caregivers. Existing law also requires every skilled nursing facility to post information about staffing levels in the manner specified by federal requirements. Existing law makes it a misdemeanor for any person to willfully or repeatedly violate these provisions.

This bill would require the department to develop regulations that become effective June 1, 2016, and include separate staff-to-patient ratios for certified nurse assistants that comply with specified requirements. The bill would require the posted information to include an accurate report of the number of staff working each shift and to be posted in specified locations, including an area used for employee breaks. The bill would require a skilled nursing facility to make staffing data available, upon oral or written request and at a reasonable cost,

within 15 days of receiving a request. By expanding the scope of a crime, this bill would impose a state-mandated local program.

(2) Existing law provides for the Medi-Cal program, which is administered by the State Department of Health Care Services, under which qualified low-income individuals receive health care services. The Medi-Cal program is, in part, governed and funded by federal Medicaid Program provisions.

Existing law, the Medi-Cal Long-Term Care Reimbursement Act, operative until August 1, 2015, requires the department to make a supplemental payment to skilled nursing facilities based on specified criteria and according to performance measure benchmarks. Existing law requires the department to establish and publish quality and accountability measures, which are used to determine supplemental payments. Existing law requires, beginning in the 2011–12 fiscal year, the measures to include, among others, compliance with specified nursing hours per patient per day requirements.

This bill would also require, beginning in the 2016–17 fiscal year, the measures to include compliance with specified certified nursing assistant staff-to-patient ratio requirements. The bill would make this provision contingent on the Medi-Cal Long-Term Care Reimbursement Act being operative on January 1, 2016.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 1276.65 of the Health and Safety Code
- 2 is amended to read:
- 3 1276.65. (a) For purposes of this section, the following
- 4 definitions shall apply:
- 5 (1) “Direct caregiver” means a registered nurse, as referred to
- 6 in Section 2732 of the Business and Professions Code, a licensed
- 7 vocational nurse, as referred to in Section 2864 of the Business
- 8 and Professions Code, a psychiatric technician, as referred to in

1 Section 4516 of the Business and Professions Code, and a certified
2 nurse assistant, as defined in Section 1337.

3 (2) “Skilled nursing facility” means a skilled nursing facility as
4 defined in subdivision (c) of Section 1250.

5 (b) A person employed to provide services such as food
6 preparation, housekeeping, laundry, or maintenance services shall
7 not provide nursing care to residents and shall not be counted in
8 determining ratios under this section.

9 (c) (1) (A) ~~Notwithstanding any other provision of law, the~~
10 ~~State Department of Health Services~~ *Public Health* shall develop
11 regulations that become effective ~~August 1, 2003,~~ *June 1, 2016,*
12 that establish staff-to-patient ratios for direct caregivers working
13 in a skilled nursing facility. These ratios shall include separate
14 licensed nurse staff-to-patient ratios *and certified nurse assistant*
15 *staff-to-patient ratios*, in addition to the ratios established for other
16 direct caregivers.

17 (B) (i) *The certified nurse assistant staff-to-patient ratios*
18 *developed pursuant to subparagraph (A) shall be no less than the*
19 *following:*

20 (I) *During the day shift, one certified nurse assistant for every*
21 *five patients, or fraction thereof.*

22 (II) *During the evening shift, one certified nurse assistant for*
23 *every seven patients, or fraction thereof.*

24 (III) *During the night shift, one certified nurse assistant for*
25 *every 16 patients, or fraction thereof.*

26 (ii) *For the purposes of this subparagraph, the following terms*
27 *have the following meanings:*

28 (1) *“Day shift” means the 8-hour period during which the*
29 *facility’s patients require the greatest amount of care.*

30 (II) *“Evening shift” means the 8-hour period when the facility’s*
31 *patients require more than minimal care.*

32 (III) *“Night shift” means the 8-hour period during which a*
33 *facility’s patients require the least amount of care.*

34 (2) The department, in developing staff-to-patient ratios for
35 ~~direct caregivers~~ *caregivers, certified nurse assistants*, and licensed
36 nurses required by this section, shall convert the existing
37 requirement under Section 1276.5 of this code and Section 14110.7
38 of the Welfare and Institutions Code for 3.2 nursing hours per
39 patient day of care and shall ensure that no less care is given than
40 is required pursuant to Section 1276.5 of this code and Section

1 14110.7 of the Welfare and Institutions Code. Further, the
2 department shall develop the ratios in a manner that minimizes
3 additional state costs, maximizes resident access to care, and takes
4 into account the length of the shift worked. In developing the
5 regulations, the department shall develop a procedure for facilities
6 to apply for a waiver that addresses individual patient needs except
7 that in no instance shall the minimum staff-to-patient ratios be less
8 than the 3.2 nursing hours per patient day required under Section
9 1276.5 of this code and Section 14110.7 of the Welfare and
10 Institutions Code.

11 (d) The staffing ratios to be developed pursuant to this section
12 shall be minimum standards only. Skilled nursing facilities shall
13 employ and schedule additional staff as needed to ensure quality
14 resident care based on the needs of individual residents and to
15 ensure compliance with all relevant state and federal staffing
16 requirements.

17 (e) No later than January 1, 2006, and every five years thereafter,
18 the department shall consult with consumers, consumer advocates,
19 recognized collective bargaining agents, and providers to determine
20 the sufficiency of the staffing standards provided in this section
21 and may adopt regulations to increase the minimum staffing ratios
22 to adequate levels.

23 (f) (1) In a manner pursuant to federal requirements, effective
24 January 1, 2003, every skilled nursing facility shall post
25 information about staffing levels that includes the current number
26 of licensed and unlicensed nursing staff directly responsible for
27 resident care in the facility. This posting shall include staffing
28 requirements developed pursuant to this ~~section~~. *section and an*
29 *accurate report of the number of staff working each shift. The*
30 *information shall be posted on paper that is at least 8.5 inches by*
31 *14 inches and shall be printed in a font of at least 16 point.*

32 (2) *The information described in paragraph (1) shall be posted,*
33 *at a minimum, in the following locations:*

34 (A) *An area readily accessible to members of the public.*

35 (B) *An area used for employee breaks.*

36 (C) *An area used by residents for communal functions,*
37 *including, but not limited to, dining, resident council meetings, or*
38 *activities.*

39 (3) (A) *Upon oral or written request, every skilled nursing*
40 *facility shall make direct caregiver staffing data available to the*

1 *public for review at a reasonable cost. A skilled nursing facility*
2 *shall provide the data to the requestor within 15 days after*
3 *receiving a request.*

4 *(B) For the purpose of this paragraph, “reasonable cost”*
5 *includes, but is not limited to, a ten-cent (\$0.10) per page fee for*
6 *standard reproduction of documents that are 8.5 inches by 14*
7 *inches or smaller or a retrieval or processing fee not exceeding*
8 *sixty dollars (\$60) if the requested data is provided on a digital*
9 *or other electronic medium and the requestor requests delivery of*
10 *the data in a digital or other electronic medium, including*
11 *electronic mail.*

12 (g) (1) Notwithstanding any other ~~provision~~ of law, the
13 department shall inspect for compliance with this section during
14 state and federal periodic inspections, including, but not limited
15 to, those inspections required under Section 1422. This inspection
16 requirement shall not limit the department’s authority in other
17 circumstances to cite for violations of this section or to inspect for
18 compliance with this section.

19 (2) A violation of the regulations developed pursuant to this
20 section may constitute a class “B,” “A,” or “AA” violation pursuant
21 to the standards set forth in Section 1424.

22 (h) The requirements of this section are in addition to any
23 requirement set forth in Section 1276.5 of this code and Section
24 14110.7 of the Welfare and Institutions Code.

25 (i) Initial implementation of the staffing ratio developed pursuant
26 to requirements set forth in this section shall be contingent on an
27 appropriation in the annual Budget Act or another statute.

28 (j) In implementing this section, the department may contract
29 as necessary, on a bid or nonbid basis, for professional consulting
30 services from nationally recognized higher education and research
31 institutions, or other qualified individuals and entities not
32 associated with a skilled nursing facility, with demonstrated
33 expertise in long-term care. This subdivision establishes an
34 accelerated process for issuing contracts pursuant to this section
35 and contracts entered into pursuant to this section shall be exempt
36 from the requirements of Chapter 1 (commencing with Section
37 10100) and Chapter 2 (commencing with Section 10290) of Part
38 2 of Division 2 of the Public Contract Code.

39 (k) This section shall not apply to facilities defined in Section
40 1276.9.

SEC. 2. Section 14126.022 of the Welfare and Institutions Code is amended to read:

14126.022. (a) (1) By August 1, 2011, the department shall develop the Skilled Nursing Facility Quality and Accountability Supplemental Payment System, subject to approval by the federal Centers for Medicare and Medicaid Services, and the availability of federal, state, or other funds.

(2) (A) The system shall be utilized to provide supplemental payments to skilled nursing facilities that improve the quality and accountability of care rendered to residents in skilled nursing facilities, as defined in subdivision (c) of Section 1250 of the Health and Safety Code, and to penalize those facilities that do not meet measurable standards.

(B) A freestanding pediatric subacute care facility, as defined in Section 51215.8 of Title 22 of the California Code of Regulations, shall be exempt from the Skilled Nursing Facility Quality and Accountability Supplemental Payment System.

(3) The system shall be phased in, beginning with the 2010–11 rate year.

(4) The department may utilize the system to do all of the following:

(A) Assess overall facility quality of care and quality of care improvement, and assign quality and accountability payments to skilled nursing facilities pursuant to performance measures described in subdivision (i).

(B) Assign quality and accountability payments or penalties relating to quality of care, or direct care staffing levels, wages, and benefits, or both.

(C) Limit the reimbursement of legal fees incurred by skilled nursing facilities engaged in the defense of governmental legal actions filed against the facilities.

(D) Publish each facility's quality assessment and quality and accountability payments in a manner and form determined by the director, or his or her designee.

(E) Beginning with the 2011–12 fiscal year, establish a base year to collect performance measures described in subdivision (i).

(F) Beginning with the 2011–12 fiscal year, in coordination with the State Department of Public Health, publish the direct care staffing level data and the performance measures required pursuant to subdivision (i).

1 (b) (1) There is hereby created in the State Treasury, the Skilled
2 Nursing Facility Quality and Accountability Special Fund. The
3 fund shall contain moneys deposited pursuant to subdivisions (g)
4 and (j) to (l), inclusive. Notwithstanding Section 16305.7 of the
5 Government Code, the fund shall contain all interest and dividends
6 earned on moneys in the fund.

7 (2) Notwithstanding Section 13340 of the Government Code,
8 the fund shall be continuously appropriated without regard to fiscal
9 year to the department for making quality and accountability
10 payments, in accordance with subdivision (m), to facilities that
11 meet or exceed predefined measures as established by this section.

12 (3) Upon appropriation by the Legislature, moneys in the fund
13 may also be used for any of the following purposes:

14 (A) To cover the administrative costs incurred by the State
15 Department of Public Health for positions and contract funding
16 required to implement this section.

17 (B) To cover the administrative costs incurred by the State
18 Department of Health Care Services for positions and contract
19 funding required to implement this section.

20 (C) To provide funding assistance for the Long-Term Care
21 Ombudsman Program activities pursuant to Chapter 11
22 (commencing with Section 9700) of Division 8.5.

23 (c) No appropriation associated with this bill is intended to
24 implement the provisions of Section 1276.65 of the Health and
25 Safety Code.

26 (d) (1) There is hereby appropriated for the 2010–11 fiscal year,
27 one million nine hundred thousand dollars (\$1,900,000) from the
28 Skilled Nursing Facility Quality and Accountability Special Fund
29 to the California Department of Aging for the Long-Term Care
30 Ombudsman Program activities pursuant to Chapter 11
31 (commencing with Section 9700) of Division 8.5. It is the intent
32 of the Legislature for the one million nine hundred thousand dollars
33 (\$1,900,000) from the fund to be in addition to the four million
34 one hundred sixty-eight thousand dollars (\$4,168,000) proposed
35 in the Governor’s May Revision for the 2010–11 Budget. It is
36 further the intent of the Legislature to increase this level of
37 appropriation in subsequent years to provide support sufficient to
38 carry out the mandates and activities pursuant to Chapter 11
39 (commencing with Section 9700) of Division 8.5.

(2) The department, in partnership with the California Department of Aging, shall seek approval from the federal Centers for Medicare and Medicaid Services to obtain federal Medicaid reimbursement for activities conducted by the Long-Term Care Ombudsman Program. The department shall report to the fiscal committees of the Legislature during budget hearings on progress being made and any unresolved issues during the 2011–12 budget deliberations.

(e) There is hereby created in the Special Deposit Fund established pursuant to Section 16370 of the Government Code, the Skilled Nursing Facility Minimum Staffing Penalty Account. The account shall contain all moneys deposited pursuant to subdivision (f).

(f) (1) Beginning with the 2010–11 fiscal year, the State Department of Public Health shall use the direct care staffing level data it collects to determine whether a skilled nursing facility has met the nursing hours per patient per day requirements pursuant to Section 1276.5 of the Health and Safety Code.

(2) (A) Beginning with the 2010–11 fiscal year, the State Department of Public Health shall assess a skilled nursing facility, licensed pursuant to subdivision (c) of Section 1250 of the Health and Safety Code, an administrative penalty if the State Department of Public Health determines that the skilled nursing facility fails to meet the nursing hours per patient per day requirements pursuant to Section 1276.5 of the Health and Safety Code as follows:

(i) Fifteen thousand dollars (\$15,000) if the facility fails to meet the requirements for 5 percent or more of the audited days up to 49 percent.

(ii) Thirty thousand dollars (\$30,000) if the facility fails to meet the requirements for over 49 percent or more of the audited days.

(B) (i) If the skilled nursing facility does not dispute the determination or assessment, the penalties shall be paid in full by the licensee to the State Department of Public Health within 30 days of the facility's receipt of the notice of penalty and deposited into the Skilled Nursing Facility Minimum Staffing Penalty Account.

(ii) The State Department of Public Health may, upon written notification to the licensee, request that the department offset any moneys owed to the licensee by the Medi-Cal program or any other

1 payment program administered by the department to recoup the
2 penalty provided for in this section.

3 (C) (i) If a facility disputes the determination or assessment
4 made pursuant to this paragraph, the facility shall, within 15 days
5 of the facility's receipt of the determination and assessment,
6 simultaneously submit a request for appeal to both the department
7 and the State Department of Public Health. The request shall
8 include a detailed statement describing the reason for appeal and
9 include all supporting documents the facility will present at the
10 hearing.

11 (ii) Within 10 days of the State Department of Public Health's
12 receipt of the facility's request for appeal, the State Department
13 of Public Health shall submit, to both the facility and the
14 department, all supporting documents that will be presented at the
15 hearing.

16 (D) The department shall hear a timely appeal and issue a
17 decision as follows:

18 (i) The hearing shall commence within 60 days from the date
19 of receipt by the department of the facility's timely request for
20 appeal.

21 (ii) The department shall issue a decision within 120 days from
22 the date of receipt by the department of the facility's timely request
23 for appeal.

24 (iii) The decision of the department's hearing officer, when
25 issued, shall be the final decision of the State Department of Public
26 Health.

27 (E) The appeals process set forth in this paragraph shall be
28 exempt from Chapter 4.5 (commencing with Section 11400) and
29 Chapter 5 (commencing with Section 11500), of Part 1 of Division
30 3 of Title 2 of the Government Code. The provisions of Section
31 100171 and 131071 of the Health and Safety Code shall not apply
32 to appeals under this paragraph.

33 (F) If a hearing decision issued pursuant to subparagraph (D)
34 is in favor of the State Department of Public Health, the skilled
35 nursing facility shall pay the penalties to the State Department of
36 Public Health within 30 days of the facility's receipt of the
37 decision. The penalties collected shall be deposited into the Skilled
38 Nursing Facility Minimum Staffing Penalty Account.

39 (G) The assessment of a penalty under this subdivision does not
40 supplant the State Department of Public Health's investigation

1 process or issuance of deficiencies or citations under Chapter 2.4
2 (commencing with Section 1417) of Division 2 of the Health and
3 Safety Code.

4 (g) The State Department of Public Health shall transfer, on a
5 monthly basis, all penalty payments collected pursuant to
6 subdivision (f) into the Skilled Nursing Facility Quality and
7 Accountability Special Fund.

8 (h) Nothing in this section shall impact the effectiveness or
9 utilization of Section 1278.5 or 1432 of the Health and Safety Code
10 relating to whistleblower protections, or Section 1420 of the Health
11 and Safety Code relating to complaints.

12 (i) (1) Beginning in the 2010–11 fiscal year, the department,
13 in consultation with representatives from the long-term care
14 industry, organized labor, and consumers, shall establish and
15 publish quality and accountability measures, benchmarks, and data
16 submission deadlines by November 30, 2010.

17 (2) The methodology developed pursuant to this section shall
18 include, but not be limited to, the following requirements and
19 performance measures:

20 (A) Beginning in the 2011–12 fiscal year:

21 (i) Immunization rates.

22 (ii) Facility acquired pressure ulcer incidence.

23 (iii) The use of physical restraints.

24 (iv) Compliance with the nursing hours per patient per day
25 requirements pursuant to Section 1276.5 of the Health and Safety
26 Code.

27 (v) Resident and family satisfaction.

28 (vi) Direct care staff retention, if sufficient data is available.

29 (B) *Beginning in the 2016–17 fiscal year, compliance with the*
30 *certified nursing assistant staff-to-patient ratio requirements*
31 *pursuant to Section 1276.65 of the Health and Safety Code.*

32 ~~(B)~~

33 (C) If this act is extended beyond the dates on which it becomes
34 inoperative and is repealed, in accordance with Section 14126.033,
35 the department, in consultation with representatives from the
36 long-term care industry, organized labor, and consumers, beginning
37 in the 2013–14 rate year, shall incorporate additional measures
38 into the system, including, but not limited to, quality and
39 accountability measures required by federal health care reform

1 that are identified by the federal Centers for Medicare and Medicaid
2 Services.

3 ~~(C)~~

4 (D) The department, in consultation with representatives from
5 the long-term care industry, organized labor, and consumers, may
6 incorporate additional performance measures, including, but not
7 limited to, the following:

8 (i) Compliance with state policy associated with the United
9 States Supreme Court decision in *Olmstead v. L.C. ex rel. Zimring*
10 (1999) 527 U.S. 581.

11 (ii) Direct care staff retention, if not addressed in the 2012–13
12 rate year.

13 (iii) The use of chemical restraints.

14 (j) (1) Beginning with the 2010–11 rate year, and pursuant to
15 subparagraph (B) of paragraph (5) of subdivision (a) of Section
16 14126.023, the department shall set aside savings achieved from
17 setting the professional liability insurance cost category, including
18 any insurance deductible costs paid by the facility, at the 75th
19 percentile. From this amount, the department shall transfer the
20 General Fund portion into the Skilled Nursing Facility Quality and
21 Accountability Special Fund. A skilled nursing facility shall
22 provide supplemental data on insurance deductible costs to
23 facilitate this adjustment, in the format and by the deadlines
24 determined by the department. If this data is not provided, a
25 facility's insurance deductible costs will remain in the
26 administrative costs category.

27 (2) Notwithstanding paragraph (1), for the 2012–13 rate year
28 only, savings from capping the professional liability insurance cost
29 category pursuant to paragraph (1) shall remain in the General
30 Fund and shall not be transferred to the Skilled Nursing Facility
31 Quality and Accountability Special Fund.

32 (k) Beginning with the 2013–14 rate year, if there is a rate
33 increase in the weighted average Medi-Cal reimbursement rate,
34 the department shall set aside the first 1 percent of the weighted
35 average Medi-Cal reimbursement rate increase for the Skilled
36 Nursing Facility Quality and Accountability Special Fund.

37 (l) If this act is extended beyond the dates on which it becomes
38 inoperative and is repealed, in accordance with Section 14126.033,
39 beginning with the 2014–15 rate year, in addition to the amount
40 set aside pursuant to subdivision (k), if there is a rate increase in

1 the weighted average Medi-Cal reimbursement rate, the department
2 shall set aside at least one-third of the weighted average Medi-Cal
3 reimbursement rate increase, up to a maximum of 1 percent, from
4 which the department shall transfer the General Fund portion of
5 this amount into the Skilled Nursing Facility Quality and
6 Accountability Special Fund.

7 (m) (1) (A) Beginning with the 2013–14 rate year, the
8 department shall pay a supplemental payment, by April 30, 2014,
9 to skilled nursing facilities based on all of the criteria in subdivision
10 (i), as published by the department, and according to performance
11 measure benchmarks determined by the department in consultation
12 with stakeholders.

13 (B) (i) The department may convene a diverse stakeholder
14 group, including, but not limited to, representatives from consumer
15 groups and organizations, labor, nursing home providers, advocacy
16 organizations involved with the aging community, staff from the
17 Legislature, and other interested parties, to discuss and analyze
18 alternative mechanisms to implement the quality and accountability
19 payments provided to nursing homes for reimbursement.

20 (ii) The department shall articulate in a report to the fiscal and
21 appropriate policy committees of the Legislature the
22 implementation of an alternative mechanism as described in clause
23 (i) at least 90 days prior to any policy or budgetary changes, and
24 seek subsequent legislation in order to enact the proposed changes.

25 (2) Skilled nursing facilities that do not submit required
26 performance data by the department's specified data submission
27 deadlines pursuant to subdivision (i) shall not be eligible to receive
28 supplemental payments.

29 (3) Notwithstanding paragraph (1), if a facility appeals the
30 performance measure of compliance with the nursing hours per
31 patient per day requirements, pursuant to Section 1276.5 of the
32 Health and Safety Code, to the State Department of Public Health,
33 and it is unresolved by the department's published due date, the
34 department shall not use that performance measure when
35 determining the facility's supplemental payment.

36 (4) Notwithstanding paragraph (1), if the department is unable
37 to pay the supplemental payments by April 30, 2014, then on May
38 1, 2014, the department shall use the funds available in the Skilled
39 Nursing Facility Quality and Accountability Special Fund as a
40 result of savings identified in subdivisions (k) and (l), less the

1 administrative costs required to implement subparagraphs (A) and
2 (B) of paragraph (3) of subdivision (b), in addition to any Medicaid
3 funds that are available as of December 31, 2013, to increase
4 provider rates retroactively to August 1, 2013.

5 (n) The department shall seek necessary approvals from the
6 federal Centers for Medicare and Medicaid Services to implement
7 this section. The department shall implement this section only in
8 a manner that is consistent with federal Medicaid law and
9 regulations, and only to the extent that approval is obtained from
10 the federal Centers for Medicare and Medicaid Services and federal
11 financial participation is available.

12 (o) In implementing this section, the department and the State
13 Department of Public Health may contract as necessary, with
14 California's Medicare Quality Improvement Organization, or other
15 entities deemed qualified by the department or the State
16 Department of Public Health, not associated with a skilled nursing
17 facility, to assist with development, collection, analysis, and
18 reporting of the performance data pursuant to subdivision (i), and
19 with demonstrated expertise in long-term care quality, data
20 collection or analysis, and accountability performance measurement
21 models pursuant to subdivision (i). This subdivision establishes
22 an accelerated process for issuing any contract pursuant to this
23 section. Any contract entered into pursuant to this subdivision shall
24 be exempt from the requirements of the Public Contract Code,
25 through December 31, 2013.

26 (p) Notwithstanding Chapter 3.5 (commencing with Section
27 11340) of Part 1 of Division 3 of Title 2 of the Government Code,
28 the following shall apply:

29 (1) The director shall implement this section, in whole or in
30 part, by means of provider bulletins, or other similar instructions
31 without taking regulatory action.

32 (2) The State Public Health Officer may implement this section
33 by means of all facility letters, or other similar instructions without
34 taking regulatory action.

35 (q) Notwithstanding paragraph (1) of subdivision (m), if a final
36 judicial determination is made by any state or federal court that is
37 not appealed, in any action by any party, or a final determination
38 is made by the administrator of the federal Centers for Medicare
39 and Medicaid Services, that any payments pursuant to subdivisions
40 (a) and (m), are invalid, unlawful, or contrary to any provision of

1 federal law or regulations, or of state law, these subdivisions shall
2 become inoperative, and for the 2011–12 rate year, the rate increase
3 provided under subparagraph (A) of paragraph (4) of subdivision
4 (c) of Section 14126.033 shall be reduced by the amounts described
5 in subdivision (j). For the 2013–14 rate year, and for each
6 subsequent rate year, any rate increase shall be reduced by the
7 amounts described in subdivisions (j) to (l), inclusive.

8 SEC. 3. No reimbursement is required by this act pursuant to
9 Section 6 of Article XIII B of the California Constitution because
10 the only costs that may be incurred by a local agency or school
11 district will be incurred because this act creates a new crime or
12 infraction, eliminates a crime or infraction, or changes the penalty
13 for a crime or infraction, within the meaning of Section 17556 of
14 the Government Code, or changes the definition of a crime within
15 the meaning of Section 6 of Article XIII B of the California
16 Constitution.

17 SEC. 4. Section 2 of this act shall only become operative if the
18 Medi-Cal Long-Term Care Reimbursement Act (Article 3.8
19 (commencing with Section 14126) of Chapter 7 of Part 3 of
20 Division 9 of the Welfare and Institutions Code) is operative on
21 January 1, 2016.